

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5760 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKBHAI GOVINDBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/11/1999

ORAL JUDGEMENT

#. Heard learned counsel Ms. D.R.Kachhavah, for the petitioner and learned A.G.P. Mr.D.P.Joshi, for the respondent nos.1,2 and 3.

#. The detention order dtd.20.1.99 passed by respondent no.1-Commissioner of Police, Ahmedabad City in exercise of power conferred under Sec.3 (1) of Gujarat Prevention

of Anti Social Activity Act 1985 ("PASA" for short) is challenged in the present proceeding under Article 226 of the Constitution of India.

#. The ground of detention supplied to the petitioner under Sec.9 (1) of PASA, copy of which is produced at Annexure B inter alia indicate that two prohibition cases have been registered against the petitioner at Nashabandhi Police Station, and at Naranpura Police Station respectively and in each of the case country made liquor was seized from the petitioner. Furthermore, two witnesses on assurance of their anonymity have given information about the anti-social activity of petitioner pertaining to incident dtd.25.12.98 and 5.1.99. That in consideration of above stated material, respondent no.1 has come to conclusion that the petitioner is a "bootlegger" within the meaning of Sec.2 (b) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his anti social activity which prejudicially affects the maintenance of public order, the detention order is necessary and hence impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. It has been contended at bar on behalf of the petitioner that on the date of passing the impugned order petitioner was in remand custody and yet without considering less drastic remedy like the passing of bail or claiming cancellation of bail under Sec.437 (5) of Cr.P.C, impugned order of detention is passed and as such, detention order is bad in law.

#. In the matter of Jubedabibi Rashidkhan Pathan Vs. State of Gujarat, reported in 1995 (2) G.L.R. P.1134, the Division Bench of this court has expressed a view that non consideration of less drastic remedy like cancellation of bail as available under Sec.437 (5) of Cr.P.C. suggests non application of the mind on the part of the detaining authority vitiating subjective satisfaction rendering the impugned order invalid. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal No.1056/99 decided on 15.9.99 by this court (Coram : C.K.Thakkar & A.L.Dave JJ).

#. In the instant case, grounds of detention disclose that the detaining authority has considered that petitioner was in remand custody from the date of passing of order. However, detaining authority has shown apprehension that on production of petitioner before the Court, petitioner is likely to apply for bail and in all

possibility he is likely to be released on bail and thereafter he would continue his anti-social and activity therefore to prevent the petitioner forthwith, detention order is necessary. Thus the detention order appears to have been passed on apprehension rather than the material and it appears to have been passed without considering the aspect of less drastic remedy and as such I am constrained to hold that impugned order is bad in law.

#. As the petition succeeds on above-stated ground alone, it is not necessary to decide other contentions raised by the petitioner.

#. On aforesaid discussion, petition is allowed. Detention order dtd.21.1.99 passed by the respondent no.1 against the petitioner is hereby quashed and set aside. Petitioner Ashokbhai Govindbhai Patel is directed to be set at liberty forthwith, if he is not required in any other case.

#. Rule to that extent made absolute.

kks.